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NO.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

NANCY ANGI f/k/a NANCY NERAT, PETITIONER

v.

MARILYN SWACKER and STATE FARM INSURANCE COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE
MICHIGAN SUPREME COURT

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QUESTIONS PRESENTED FOR REVIEW

1. Does MCLA 500.3135(2)(d), which allows owners of four wheel vehicles such as automobiles or trucks to sue any negligent party for property damage to their vehicle not covered by insurance up to four hundred ($400.00) dollars deny to owners of motorcycles the equal protection of the laws by denying said owners the right to sue for property damage at all under the same circumstances when owners of four wheeled vehicles and motorcycles are both required under Michigan law to carry insurance for public liability and property damage in the same minimum amounts in order to be licensed in the State of Michigan?

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Nancy Angi, f/k/a Nancy Nerat, by and through her attorneys, Keller & Katkowsky, P. C., Lawrence S. Katkowsky, of counsel, hereby petitions for a writ of certiorari to review the judgment of the Michigan Supreme Court in this case.

OPINIONS BELOW

The opinion of the Michigan Supreme Court (App. B, infra, 7a) is unreported. The opinion of the Michigan Court of Appeals (App. B, infra, 7a-9a) is reported at_____ Mich. App._____, 388 N.W.2d 305. The opinion of the Menominee County Circuit Court (App.

B., 9a-12a) is not reported. The decision of the Small Claims Division of the Menominee County District Court is not reported.

JURISDICTION

The Order of the Michigan Supreme Court denying leave to appeal (App. B, infra 7a) was entered on September 23, 1986. The jurisdiction of this Court is invoked under 28 U.S.C. 1257(2).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The Fourteenth Amendment in the United States Constitution provides in relevant part:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life. . .; nor deny to any person within its jurisdiction the equal protection of the laws.

2. M.C.L.A. 500.3101 provides in relevant part:

> (1) The owner or registrant of a motor vehicle required to be registered in this state shall maintain security for payment of benefits under

personal protection insurance, property protection insurance, and residual liability insurance. . .

2. As used in this chapter:

(a) "Motorcycle" means a vehicle having a saddle or seat for the use of the rider, designed to travel on not more than 3 wheels in contact with the ground, which is equipped with a motor that exceeds 50 cubin centimeters pistion displacement. . .

(c) "Motor vehicle" means a vehicle, including a trailer, operated or designed for operation upon a public highway by power other than muscular power which has more than 2 wheels. Motor vehicle does not include a motorcycle or a moped as defined in section 32b of Act No. 300 of the Public Acts of 1949.

(d) "Motor vehicle accident" means a loss involving the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle regardless of whether the accident also involves the ownership, operation, maintenance, or use of a motorcycle as a motorcycle.

3. M.C.L.A. 500.3103 provides in relevant part as follows:

(1) An owner or registrant of a motorcycle shall provide security against loss resulting from liability imposed by law for property damage, bodily injury, or death suffered by a person arising out of ownership, maintenance, or use of that motorcycle. The security shall conform with the requirements of section 3009(1).

4. M.C.L.A. 500.3131 provides in relevant part as follows:

> (1) Residual liability insurance shall cover bodily injury and property damage which occurs within the United States, its territories and possessions, or in Canada. . .
>
> (2) This section shall not require coverage in this state other than that required by section 3009(1). . .

5. M.C.L.A. 500.3135 provides in relevant part as follows:

> (1) A person remains subject to tort liability for non-economic loss caused by his or her ownership, maintenance or use of a motor vehicle only if the injured person has suffered death, serious impairment of body function, or permanent serious disfigurement.
>
> (2) Notwithstanding any other provision of law, tort liability arising from the ownership, maintenance, or use within this state of a motor vehicle with respect to which the security required by section 3103(3) and (4) was in effect is abolished except as to:
>
> * * *
>
> (d) Damages up to $400.00 to motor vehicles to the extent that the damages are not covered by insurance. An action for damages pursuant to this subdivision shall be conducted in compliance with subsection (3).

STATEMENT

Prior to 1973 all Michigan motorists and non-motorists alike retained traditional tort remedies for personal injuries and property damges without limitation arising out of accidents taking place on Michigan streets and highways.

Effective March 30, 1973, the Michigan legislature passed P.A. 1972, No. 294, popularly known as the No-Fault Act. Section 3135 of the act provided generally for the abolition of tort liability arising out of the ownership, maintenance or use of motor vehicles within the state except as to intentionally-caused harm and for non-economic loss if an injured person suffered death, serious impairment of body function or permanent serious disfigurement.

Effective November 13, 1979, the legislature amended Section 3135 by adding subsections (2)(d), (3), (4), and (5), commonly known as the "mini-tort" section of the act. This amendment allowed for suit for damages up to $400.00 to "motor vehicles", to the extent the damages

were not covered by insurance.

The controversy in question arose out of a June 16, 1983 accident in which a car owned by Defendant Swacker and insured by Defendant State Farm Insurance Company collided with Plaintiff's motorcycle at an intersection in Menominee, Michigan. Defendant Swacker was issued a citation for a stop sign violation. Plaintiff had no insurance coverage at the time of the accident.

On August 3, 1983, Plaintiff filed a claim against Swacker in the Small Claims Division of the Menominee County District Court, seeking damages in the amount of $228.85, which represented the cost of repair of the motorcycle. By petition of the Defendants, the case was removed to the general civil division of the District Court. Defendants thereafter filed a motion for summary judgment, claiming that Plaintiff could not seek recovery under the "mini-tort" provision of the Michigan No-Fault Act, M.C.L.A. 500.3135 (2)(d). The motion was denied by the District Court and judgment was entered for the Plaintiff.

The court held that damages to motorcycles were available under the Act.

The Defendants appealed to the Menominee County Circuit Court which affirmed. The Circuit Court concurred with the finding that the mini-tort provision permits recovery for damages to motorcycles. The Court observed that the Court of Appeals in Braden v Spencer, 100 Mich App 543, 299 N.W. 2d 69 (1980) had taken the position that the legislature did not intend to exclude motorcycles from M.C.L.A. 500.3135 and had the legislative intent been otherwise, specific language to that effect would have been utilized. Braden, supra, was concerned with deciding whether motorcyclists were subject to the abolition of traditional tort remedies the same as other motorists under M.C.L.A. 500.3135(1) and (2). The court decided that they were.

Defendants then sought leave to appeal to the Michigan Court of Appeals and leave was granted on April 11, 1985. On March 18, 1986, the Court issued its decision reversing the

Circuit Court order. It found that M.C.L.A. 500.3135(2)(d) did not afford a cause of action for damages to motorcycles involved in accidents with automobiles. The panel found that the statutory exception to the abolition of tort liability found in Section 3135 only applied to certain damages to motor vehicles and because the statutory definition of motor vehicles found in M.C.L.A. 500.3101(2)(c) expressly excludes motorcycles, there was no right to recover damages to motorcycles under the mini-tort provisions of Section 3135.

On April 7, 1986, the Petitioner applied for leave to appeal to the Michigan Supreme Court. In her petition she contended that not only did M.C.L.A. 500.3135(2)(d) authorize recovery for damages to motorcycles, but to construe it as excluding motorcycles rendered the act as being violative of Petitioner's rights under the equal protection clauses of the Michigan and United States Constitutions.

On September 23, 1986, the Michigan Supreme Court denied Petitioner's Application for Leave

to Appeal without opinion.

REASONS FOR GRANTING THE PETITION

In the instant case, which if left standing by this court governs the rights of all motorcyclists riding the streets and highways of the State of Michigan, the Petitioner is left to being treated in two completely different ways within the same section of the same statute. In one sub-section, motorcyclists are told that they have lost all their traditional tort remedies except for certain exceptions notwithstanding the fact that their vehicle is not a "motor vehicle" within the terms of M.C.L.A. 500.3101 (2)(c) and (d). M.C.L.A. 500.3135(1), (2)(a), (b), and (c). Supposedly the State legislature did not intend for them to have been excluded from the provisions of Section 3135. Braden v Spencer, 100 Mich App 523, 299 N.W. 2d 65, 68 (1980). Yet the instant case holds that under Section 3135(2)(d) the legislature did not intend motorcycles to be included so as to recover up to $400.00 in property damage not covered by insurance. Nerat v Swacker,

supra, at 306.

Motorcyclists are held to be treated differently than automobile owners under this subsection of the statute. Under the circumstances of this case (and thousands, potentially, like it), the mini-tort provisions of the statute run afoul of the holdings of many decisions of this Court.

1. This Court has held that at a minimum, a statutory classification must bear some rational relationship to be a legitimate state purpose. Weber v Aetna Casualty & Surety Company, 406 U.S. 164, 92 S.Ct. 1400, 31 L.Ed.2nd 768 (1972). A sovereign may not draw distinctions between individuals based solely on differences that are irrelevant to a legitimate governmental objective. See, e.g., Reed v Reed, 404 U.S. 71, 76, 92 S.Ct. 251, 30 L.Ed. 2d 225 (1971).

To illustrate the point that providing that owners of cars may sue others (including motorcyclists) for up to $400.00 not covered by insurance, but owners of motorcycles may not is an irrational and irrelevant classification,

is apt to point out how different treatment of motorcyclists in other portions of the Act is legitimate. In Shavers v Kelley, 402 Mich. 54, 267 N.W.2d 72; Cert. den. Allstate v Kelley, 442 U.S. 934, 61 L.Ed 2d 303, opponents of the newly-passed No-Fault Act complained that by limiting coverage to those vehicles with more than 2 (now 3) wheels under Section 3101(2), the Act violated equal protection by impermissibly treating motorcycle owners differently than other motorists. In support of its holding that the Act did not deny equal protection in this regard, the Michigan Supreme Court pointed out that actuarial data indicated that motorcyclists were rarely at fault in motorcycle-automobile collisions and that motorcyclists and their passengers were far more likely to be killed or seriously injured in accidents than those involved in automobile accidents. Inclusion of motorcycles in a no-fault system would result in excessive insurance premiums. Therefore, exclusion of motorcycles from coverage under the Act was reasonably related to legitimate government interests.

But, M.C.L.A. 500.3135(2)(d) is a limited fault system. There is absolutely no rational reason whatsoever to allow an automobile owner to sue for property damage not covered by insurance, but not a motorcyclist. There is absolutely no rational reason or legitimate state interest in letting an automobile owner potentially sue a motorcyclist for property damage caused by the negligent motorcyclist, but not allowing the motorcyclist to sue the automobile owner if the car driver were negligent.

Under applicable Michigan law, both automobile owners and motorcyclists must maintain insurance for residual personal injury and property damage liability. M.C.L.A. 500.3009, 500.3101(1), 500.3103, 500.3131. The Michigan Court of Appeals in Burk v Warren, 105 Mich App. 556, 307 N.W.2d 89, 92 (1985), noted that property damage to automobiles is not a factor in determining no-fault premium costs because auto owners (like motorcyclists) must obtain independent collateral collision protection to be fully protected for property damage loss.

While admittedly we are not dealing with a "fundamental right", motorcyclists are now dealing with a situation in Michigan where they do not come under the ambit of No-Fault. That is a legitimate governmental purpose. Yet they have been told in the same subsection that they are to be regarded the same as other motorists with reference to abolition of their traditional tort remedies, but regarded as different with reference to newly-restored limited tort remedies for property damage. It is submitted that such a situation is unprecedented in law in this country and a wholesale denial of equal protection under any recognized standard.

2. The action of the Michigan legislature in barring owners of motorcycles from suing for limited property damage as can automobile owners violates an old, but firmly established tenet closely allied to that set forth in section 1 above, to wit: Once a state accords its citizens a right, it must accord it to all without invidious discrimination or run afoul of the equal protection clause. Griffin v Illinois,

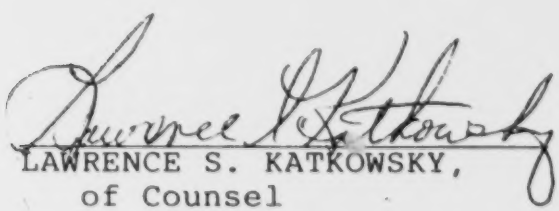
351 U.S. 12, 76 S.Ct. 585, 100 L.Ed. 801 (1956). It is submitted that, without any rational reason for the classification whatsoever, a wholesale group of people (motorcyclists, not motorcycles) have been invidiously discriminated against.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

KELLER & KATKOWSKY, P.C.



LAWRENCE S. KATKOWSKY,
of Counsel

December 22, 1986

APPENDIX A

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitution of the United States.

AMENDMENT XIV - Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

M.C.L.A. 500.3101

Sec. 3101. (1) The owner or registrant of a motor vehicle required to be registered in this State shall maintain security for payment of benefits

under personal protection insurance, property protection insurance, and residual liability insurance. Security shall be in effect continuously during the period of registration of the motor vehicle.

(2) As used in this chapter:

(a) "Motorcycle" means a vehicle having a saddle or seat for the use of the rider, designed to travel on not more than 3 wheels in contact with the ground, which is equipped with a motor that exceeds 50 cubic centimeters piston displacement. The wheels on any attachment to the vehicle shall not be considered as wheels in contact with the ground. Motorcycle does not include a moped, as defined in section 32b of Act No. 300 of the Public Acts of 1949, being section 257.32b of the Michigan Compiled Laws.

(b) "Motorcycle accident" means a loss involving the ownership, operating, maintenance, or use of a motorcycle as a motorcycle, but not involving the owner-

ship, operation, maintenance, or use of a motor vehicle as a motor vehicle.

(c) "Motor vehicle" means a vehicle including a trailer, operated or designed for operation upon a public highway by power other than muscular power which has more than 2 wheels. Motor vehicle does not include a motorcycle or a moped, as defined in section 32b of Act No. 300 of the Public Acts of 1949.

(d) "Motor vehicle accident" means a loss involving the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle regardless of whether the accident also involves the ownership, operation, maintenance, or use of a motorcycle as a motorcycle.

(3) Security may be provided under a policy issued by an insurer duly authorized to transact business in this State which affords insurance for the payment of benefits described in subsection (1). A policy of insurance represented or sold as providing security shall be deemed

to provide insurance for the payment of benefits.

(4) Security required by subsection (1) may be provided by any other method approved by the secretary of state as affording security equivalent to that afforded by a policy of insurance, if proof of the security is filed and continuously maintained with the secretary of state throughout the registration period. The person filing the security has all the obligations and rights of an insurer under this chapter. When the context permits, "insurer" as used in this chapter, includes any person filing the security as provided in this section.

M.C.L.A. 500.3103.

Sec. 3103. (1) An owner or registrant of a motorcycle shall provide security against loss resulting from liability imposed by law for property damage, bodily injury, or death suffered by a person

arising out of the ownership, maintenance, or use of that motorcycle. The security shall conform with the requirements of section 3009(1).

(2) Each insurer transacting insurance in this State which affords coverage for a motorcycle as described in subsection (1) also shall offer, to an owner or registrant of a motorcycle, security for the payment of first-party medical benefits only, in increments of $5,000.00, payable in the event the owner or registrant is involved in a motorcycle accident. An insurer providing first-party medical benefits may offer, at appropriate premium rates, deductibles, provisions for the coordination of these benefits, and provisions for the subtraction of other benefits provided or required to be provided under the laws of any state or the federal government subject to the prior approval of the commissioner. These deductibles and provisions shall apply only to benefits payable to the person named in the policy, the spouse

of the insured, and any relative of either domiciled in the same household.

(3) Each insurer which provides the security required by this section shall provide information on a form prescribed by the commissioner that describes the frequency and severity of motorcycle accidents for which claims have been filed. This information shall distinguish claims for liability and first-party medical benefits on an individual incident basis. After the receipt of 3 years of claims experience, the commissioner shall prepare and transmit a report to the legislature which compiles and analyzes the information so collected.

(4) Subsection (2) and (3) of this section shall take effect May 1, 1981.

M.C.L.A. 500.3131.

Sec. 3131. (1) Residual liability insurance shall cover bodily injury and property damage which occurs within the United States, its territories and possess-

ions, or in Canada. This insurance shall afford coverage equivalent to that required as evidence of automobile liability insurance under the financial responsibility laws of the place in which the injury or damage occurs. In this state this insurance shall afford coverage for automobile liability retained by section 3135.

(2) This section shall not require coverage in this state other than that required by section 3009(1). This section shall apply to all insurance contracts in force as of October 1, 1973, or entered into after that date.

M.C.L.A. 500.3135.

Sec. 3135. (1) A person remains subject to tort liability for non-economic loss caused by his or her ownership, maintenance, or use of a motor vehicle only if the injured person has suffered death, serious impairment of body function, or permanent serious disfigurement.

(2) Notwithstanding any other provision of law, tort liability arising from the ownership, maintenance, or use within this state of a motor vehicle with respect to which the security required by section 3101(3) and (4) was in effect is abolished except as to:

(a) Intentionally caused harm to persons or property. Even though a person knows that harm to persons or property is substantially certain to be caused by his or her act or omission, the person does not cause or suffer such harm intentionally if he or she acts or refrains from acting for the purpose of averting injury to any person, including himself or herself, or for the purpose of averting damage to tangible property.

(b) Damges for non-economic loss as provided and limited in subsection (1).

(c) Damages for allowable expenses, work loss, and survivor's loss as defined in sections 3107 to 3110 in excess of

the daily, monthly, and 3-year limitations contained in those sections. The party liable for damages is entitled to an exemption reducing his or her liability by the amount of taxes that would have been payable on account of income the injured person would have received if he or she had not been injured.

(d) Damages up to $400.00 to motor vehicles, to the extent that the damages are not covered by insurance. An action for damages pursuant to this subdivision shall be conducted in compliance with subsection (3).

(3) In an action for damages pursuant to subsection (2)(d):

(a) Damages shall be assessed on the basis of comparative fault, except that damages shall not be assessed in favor of a party who is more than 50% at fault.

(b) Liability shall not be a component of residual liability, as prescribed in section 3131, for which maintenance

of security is required by this act.

(4) Actions under subsection (2)(d) shall be commenced, whenever legally possible, in the small claims division of the district court or the conciliation division of the common pleas court of the City of Detroit or the municipal court. If the defendant or plaintiff removes such an action to a higher court and does not prevail, the judge may assess costs.

(5) A decision of a court made pursuant to subsection (2)(d), shall not be res judicata in any proceeding to determine any other liability arising from the same circumstances as gave rise to the action brought pursuant to subsection (2)(d).

(6) Subsections (2)(d), (3), (4), and (5) shall take effect July 1, 1980.

APPENDIX B

THE DECISIONS BELOW

1. OPINION OF MICHIGAN SUPREME COURT. 9/23/86
(No. 78419)

On order of the Court, the application for leave to appeal is considered, and it is DENIED, because we are ot persuaded that the questions presented should be reviewed by this Court.

The motion for leave to intervene as amicus curiae is rendered moot thereby, and it is DENIED.

2. OPINION OF MICHIGAN COURT OF APPEALS. 3/18/86
(No. 83414)

Defendants Marilyn Swacker and State Farm Insurance Company appeal from a circuit court order affirming the district court's award of damages to plaintiff, NANCY NERAT. We reverse.

This controversy arose out of a June 16, 1983, accident in which defendant Swacker's automobile collided with a motor-cycle owned by plaintiff. Defendant Swacker

was issued a citation for a stop sign violation. No citation was issued to plaintiff's son, who was the driver of the motorcycle.

Plaintiff had no collision insurance coverage on the motorcycle at the time of the accident.

Plaintiff filed a claim against defendant Swacker in the small claims division of the district court, seeking damages in the amount of $228.85, the cost to repair the motorcycle. On petition of defendant Swacker and her automobile insurer, defendant State Farm Insurance Company, the case was removed to the general civil division of the district court.

Defendants filed a motion for summary judgment, claiming that Plaintiff's action was barred by the provisions of the Michigan no-fault act, M.C.L. §500.3101 et seq.; M.S.A. §24.13101 et seq. The motion was denied and plaintiff was awarded damages pursuant to §3135(2)(d) of the act. M.C.L. §500.3135(2)(d); M.S.A. §24.13135(2)(d).

The circuit court affirmed.

Tort liability arising from the ownership, maintenance or use of an uninsured motor vehicle was generally abolished by Michigan's no-fault act. M.C.L. §500.3135(2); M.S.A. §24.13135(2). In 1979, the Legislature added §3135(2)(d), the so-called mini-tort provision:

> "(2) Notwithstanding any other provision of law, tort liability arising from the ownership, maintenance or use within this state of a motor vehicle with respect to which the security required by section 3103(3) and (4) was in effect is abolished except as to:
>
> "(d) Damages up to $400.00 to motor vehicles, to the extent that the damages are not covered by insurance. An action for damages pursuant to this subdivision shall be conducted in compliance with subsection (3)." M.C.L. §500.3135 (2)(d); M.S.A. §24.13135(2)(d).

The Legislature has declared that "motor vehicle", as that term is used in the no-fault act, does not include a motorcycle. M.C.L. §500.3101(2)(c); M.S.A. §24.13101(2)(c).

[1] Where statutory language is clear and unambiguous, judicial interpretation to vary the plain meaning of the statute is precluded; the Legislature must have intended the meaning it plainly expressed, and the statute must be enforced as written. Hiltz v Phil's Quality Market, 417 Mich. 335, 343, 337 N.W.2d 237 (1983); Pioneer State Mutual Ins. Co. v Allstate Ins. Co., 417 Mich 590, 595, 339 N.W.2d 470 (1983), reh den. 418 Mich. 1202 (1984), Lawrence v Dep't of Corrections, 88 Mich. App. 167 171-172, 276 N.W.2d 554 (1979), lv. den. 407 Mich. 909 (1979).

[2] We find no ambiguity in the mini-tort provision. M.C.L. §500.3135(2)(d); M.S.A. §24.1315(2)(d). This statutory exception to the abolition of tort liability applies only to certain damages to motor

vehicles. Since the relevant statutory definition of motor vehicle expressly excludes motorcycles, there is no right to sue for motorcycle damage under §3135 (2)(d). M.C.L. §500.3101(2)(c); M.S.A. §24.1310(2)(c).

Reversed. No costs.

3. OPINION OF MENOMINEE COUNTY CIRCUIT COURT. (No. 84-3831-AV) (2-5-85)

Plaintiff filed an action in the Small Claims Division of the Menominee County District Court seeking recovery for damages to her motorcycle. The stipulated set of facts indicate that Plaintiff's motorcycle was involved in a collision with Defendant Swacker's automobile on June 16, 1983.

The suit was filed under the mini-tort provision of MCLA 500.3135(2)(d). Defendant moved the matter from the Small Claims Division to the regular division of the District Court. Both Plaintiff and Defendants filed a Motion for Summary Judgment and the District Judge, Honorable

Russell W. Bradley, granted Plaintiff's Motion for Summary Judgment. Judgment was entered in favor of the Plaintiff in the amount of $614.35 plus judgment interest from the date of filing the suit. The sum of $228.85 was actual property damage to Plaintiff's motorcycle and $385.50 were costs.

The Defendants' appealed. Oral arguments were held on the appeal and both sides have filed excellent briefs.

ISSUE

WHETHER THE MINI-TORT STATUTE, MCLA 500.3135 (2)(d), AUTHORIZES RECOVERY FOR DAMAGES TO MOTORCYCLES UP TO THE STATUTORY LIMIT OF $400.00.

This Court believes that the mini-tort statute does allow recovery for damages to motorcycles.

Absent the above cited mini-tort provision the Plaintiff would not have a cause of action. It would be otherwise barred based upon judicial interpretation of the other provisions of MCLA 500.3135. Braden v Spencer,

100 Mich App 523, (1980); Burk v Warren, 105 Mich App 556, (1981). MCLA 3135(2)(d) was added to the statute by Public Act No. 147 which took immediate effect on November 13, 1979. This section authorizes recovery for damages to motor vehicles up to a maximum of $400.00. It is the Defendants' position that motorcycles are not included as a motor vehicle under this statute and that recovery should not be allowed.

Counsel have cited not appellate decisions relating directly to the issue before us and the Court has likewise found none. Counsel has brought to the attention of the Court various decisions from District Courts throughout the state and while they are informative, they lack binding precedential effect.

The trial and appellate courts of this state are littered with cases requesting construction of the terms contained in the various provisions of the No-Fault Act. MCLA 500.3135 has received as much attention in this regard as any of the other provisions of the No-Fault Act. Without reference

to appellate cases, an excellent argument can be made that the words "motor vehicle" used in MCLA 500.3135(2)(d) must be read in conjunction with MCLA 500.3101(2)(c) which clearly indicates that the term "motor vehicles" does not include a motorcycle. Thus, Defendants' argument, if a motorcycle is not a motor vehicle and MCLA 500.3135(2)(d) refers only to motor vehicles, it follows that motorcycles are not covered by the mini-tort addition to MCLA 500.3135. However, trial courts are not at liberty to overrule appellate courts and the Michigan Court of Appeals has ruled explicitly with regard to the interpretation of MCLA 500.3135. The Court of Appeals has taken the position that the Legislature did not intend to exclude motorcycles from MCLA 3135, and that had the legislative intent been to exclude motorcycles, they would have used clearer and more definitive language. The only intent of the Legislature was to exclude motorcycle owners from the requirement of obtaining No-Fault Insurance. Braden v Spencer, supra. The Court notes

that Braden interpreted MCLA 500.3135 before the addition of 500.3135(2)(d), but it logically follows that if motorcycles are included in the other provisions of the statute, they would be included in the new enactment as well.

Faced with the Braden decision, this Court is obligated to include motorcycles within the definition of motor vehicles as used in Section 3135 of the No-Fault Act.

ISSUE

WAS THE JUDGMENT AND ALLOWANCE OF COSTS IN THE DISTRICT COURT PROPER?

This Court believes that the entry of the Judgment with the costs is proper.

District Court Judgments and allowance of costs are controlled by DCR 522 and DCR 526.8(1). Those rules clearly authorize the entry of judgment and costs in the manner in which they were handled by the District Court.

ORDER

It is ordered that the Judgment of the District Court is affirmed. No further Order is necessary as this Order will become final upon its filing with the Clerk.

4. OPINION FROM MENOMINEE COUNTY DISTRICT COURT
(No. 5616) - (12-19-83)

Plaintiff Nerat sues Defendant Swacker for damages to her motorcycle sustained in a motor vehicle accident.

Defendant by her insurer moves for Summary Judgment and argues that motorcycle damages are not included in the purview of the mini tort amendment to the Michigan No Fault Insurance Act, MCLA 500.3135(2)(d), which allows suits on negligence theories for damages up to $400.00 to motor vehicles not covered by collision insurance.

No one doubts that motorcycles are "motor vehicles" for purposes of all other criminal and civil statutes regulating ownership, operation and equipment and the like, but Defendant argues that an earlier section of the Act, MCLA 500.3101 and 3123 defining

motor vehicles and exclusions from coverage, as construed, require the result argued, citing Braden v Spencer, 100 Mich App 523 as decided in 1980.

The Michigan No Fault Act in its section 3101 defines motor vehicles specifically to exclude motorcycles from the basic command of the statute and setting forth a separate definition of motorcycles. The subsequent sections of this Statute add no guidance to the controversy herein until section 3123 upon which Defendant relies which together with its proloque provides, "damages to vehicles and their contents including trailers operated or designed for operation upon a public highway by power other than muscular power, unless the vehicle is parked.. .....is excluded from property protection insurance benefits.

This section has been construed to treat motorcycles the same as motor vehicles, Burk v Warren, (1981) 307 NW2d 89, 105 Mi App 556.

Defendant argues that the ruling in Brayden

(sic) v Spencer, supra however, excludes damage to motorcycles from access to the cause of action added by the 1980 amendments now cited as MCLA 500.3135(2)(d), the so called Mini Tort Act. That cause is based upon the Statute prior to the amendment and turns on the definition of motor vehicles as distinguished from motorcycles set forth in section 3101. The thrust of Plaintiff's argument in the SPENCER case was that tort liability as to motorcycle accidents remains unaffected by the No Fault Law allowing him to sue for all property damages he could prove Defendant to be liable for under traditional tort negligence theories. Indeed in that case, he claimed damages in excess of the $400.00 allowed by the Mini Tort Statute. Denying that claim, the Court spoke not at all to the issue in the instant case for at that time, no such cause of action in mini tort existed.

Since the mini tort by definition is within the exclusive jurisdiction of District Courts, only District Courts thus far have

ruled upon the question raised in the instant case and Plaintiff has cited this Court three decisions of other District Courts, all agreeing that mini-tort actions are available for damages to motorcycles. This Court finds nothing to suggest a different result was intended by the Legislature nor required by the language of the Statute read as a whole.

Defendant's Motion for Summary Judgment is denied

5. SUPPLEMENTAL OPINION FROM MENOMINEE DISTRICT COURT 12/19/83 (No. 5616)

This Court issued its Opinion on November 7, 1983 holding that actions for Mini Tort in District Court could be maintained for damages to motorcycles in collisions with other motor vehicles up to the amount of $400.00.

On the same date the Supreme Court of Michigan issued its Opinion in Pioneer State Mutual Insurance Company v Allstate Insurance Company holding that farm tractors operating

on highways and involved in collisions with motor vehicles are excluded from property protection insurance benefits.

On the same day our Supreme Court also issued its Opinion in Murphy v Dairyland Insurance Company holding that motorcycles operating on highways and involved in collisions with motor vehicles are excluded from property protection insurance benefits.

Defendant calls this Court's attention to the above cases and urges this court to reverse its Opinion.

This Court will decline to do so and adheres to its original Opinion for the following reasons:

1) The language of neither case suggests that those cases dealt with the kind of action usually called mini-tort, authorized by the amendment now designated MCLA 500.3135 (2)(d).

2) The mini tort amendment became effective November 13, 1979. The accident in MURPHY, supra, occurred, according to the Supreme Court's Opinion, on July 3, 1979.

The language of the decision in PIONEER makes it clear that mini tort was not the cause of action in that case either.

Further, Plaintiff asks for Judgment on its Pleadings pointing out Defendant's concession at the original hearing of liability unless his Motion for Summary Judgment should prevail.

This Court agrees with Plaintiff. Judgment for Plaintiff may be entered in the amount of $288.85 plus costs to be taxed.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

No.

NANCY ANGI f/k/a NANCY NERAT, PETITIONER

-v-

MARILYN SWACKER and STATE FARM INSURANCE COMPANY

AFFIDAVIT OF MAILING

STATE OF MICHIGAN)
) SS
COUNTY OF OAKLAND)

Lawrence S. Katkowsky, being first duly sworn, deposes and says that on the 22nd day of December, 1986, he deposited a copy of the Petition for Writ of Certiorari in the within cause to:

Ernst L. Olivares, Esq.
1103 Ludington Street
Escanaba, Michigan 49829

Frank J. Kelly, (3 copies)
Attorney General of Michigan
The Law Building
Lansing, Michigan 48913

with first-class postage prepaid, and deposited in a U.S. mail receptacle located in Southfield, Michigan.

Lawrence S. Katkowsky

Subscribed and sworn to before me
this 22nd day of December, 1986

Notary Public, Oakland County, MI
My Commission Expires June 3, 1990